

JUDGE COTE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

14 CV 00059

BRIAN HURLEY,

Plaintiff,

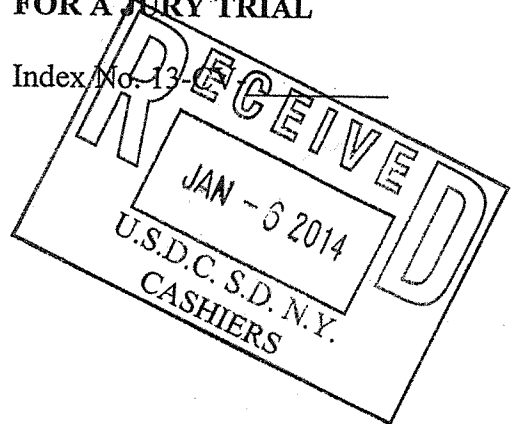
-v-

THE CITY OF NEW YORK, New York City Police
Department Officer ("P.O.") JOHNATHAN CORREA
(Tax ID No. 948472) and P.O. JOHN DOE
(the name John Doe being fictitious, as the true name
and shield numbers are not presently known), in their
individual capacities,

Defendants.

COMPLAINT
AND DEMAND
FOR A JURY TRIAL

Index No. 13-



Plaintiff BRIAN HURLEY, through his attorney MARK TAYLOR of Rankin & Taylor,
PLLC as and for his complaint, does hereby state and allege:

PRELIMINARY STATEMENT

1. This is a civil rights action brought to vindicate plaintiff's rights under the Fourth, and Fourteenth Amendments of the Constitution of the United States, through the Civil Rights Act of 1871, *as amended*, codified as 42 U.S.C. § 1983.
2. Plaintiff BRIAN HURLEY's rights were violated when officers of the NEW YORK CITY POLICE DEPARTMENT ("NYPD") unconstitutionally and without any legal basis arrested him and used unlawful force against him. By reason of defendants' actions, including their unreasonable and unlawful seizure of his person, he was deprived of his constitutional rights.
3. Plaintiff seeks an award of compensatory and punitive damages and attorneys' fees.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over federal claims pursuant to 28 U.S.C. §§ 1331, 1343(a)(3-4). This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988 for violations of the First, Fourth, and Fourteenth Amendments to the Constitution of the United States.
5. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) in that plaintiff's claim arose in the Southern District of New York.
6. An award of costs and attorneys' fees is authorized pursuant to 42 U.S.C. §1988.

PARTIES

7. Plaintiff BRIAN HURLEY ("HURLEY") was at all times relevant to this action a resident of the County of New York in the State of New York.
8. Defendant THE CITY OF NEW YORK ("CITY") is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain a police department, which acts as its agent in the area of law enforcement and for which it is ultimately responsible. Defendant CITY assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risks attach to the public consumers of the services provided by the NYPD.
9. NYPD Officer ("P.O.") CORREA ("CORREA") and P.O. JOHN DOE are and were at all times relevant herein, officers, employees and agents of the NYPD.
10. The individual defendants are being sued herein in their individual capacities.
11. At all times relevant herein, the individual defendants were acting under color of state law in the course and scope of their duties and functions as agents, servants, employees and officers of NYPD and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties. They were acting for and on behalf of the

NYPD at all times relevant herein, with the power and authority vested in them as officers, agents and employees of the NYPD and incidental to the lawful pursuit of their duties as officers, employees and agents of the NYPD.

12. The true name and shield number of defendant P.O. JOHN DOE is not currently known to the plaintiff. However, P.O. JOHN DOE was an employee or agent of the NYPD on the date of the incident. Accordingly, he is entitled to representation in this action by the New York City Law Department ("Law Department") upon his request, pursuant to New York State General Municipal Law § 50-k. The Law Department, then, is hereby put on notice (a) that plaintiff intends to name said officer as a defendant in an amended pleading once the true name and shield number of said defendant become known and (b) that the Law Department should immediately begin preparing his defense in this action.

STATEMENT OF FACTS

13. Mr. HURLEY was unlawfully arrested and maliciously injured by P.O. CORREA at the Union Square Subway Station, located below ground at or about the intersection of Fourth Avenue and East 14th Street in the County of New York and State of New York.
14. Mr. HURLEY was returning home via subway, at approximately 8:15 P.M. on December 3, 2013.
15. As Mr. HURLEY walked though the subway station, he was approached by P.O. CORREA, a plainclothes NYPD officer.
16. Without identifying himself, P.O. CORREA asked Mr. HURLEY what was clipped to his belt.
17. Mr. HURLEY replied that he had a pedometer, and P.O. CORREA, still without identifying himself as an officer, demanded to see the pedometer.

18. Mr. HURLEY declined to show the pedometer and began to walk away.
19. P.O. CORREA then threatened Mr. HURLEY with pepper spray, stating in sum and substance, "DO YOU WANT TO GET MACED?"
20. As Mr. HURLEY continued to move away, P.O. CORREA grabbed HURLEY and forced him to the ground.
21. Mr. HURLEY did not believe P.O. CORREA due to the officer's extremely aggressive manner and threats.
22. As Mr. HURLEY continued to walk away he was grabbed and forced to the ground by P.O. CORREA.
23. Believing he was being robbed, and fearing for his safety, Mr. HURLEY got up and proceeded to the MTA booth outside of the turnstiles to ask for help.
24. P.O. CORREA, accompanied by P.O. JOHN DOE (also in plainclothes) followed Mr. HURLEY, and then P.O. CORREA, without provocation, struck MR. HURLEY in his left knee with an asp, causing pain and injury.
25. Uniformed NYPD officers arrived and arrested Mr. HURLEY.
26. Mr. HURLEY was handcuffed and taken to the Transit District 4 stationhouse.
27. While in custody Mr. HURLEY requested medical attention for his left knee and was taken to Beth Israel Medical Center.
28. After receiving medical attention Mr. HURLEY was taken to central booking.
29. Mr. HURLEY was ultimately released with a decline to prosecute letter.
30. Mr. HURLEY was held in custody by defendants for a total of 21 hours.

**FIRST CLAIM FOR RELIEF
DEPRIVATION OF RIGHTS
UNDER THE UNITED STATES CONSTITUTION THROUGH 42 U.S.C. § 1983
(Against all Defendants)**

31. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.
32. Defendants, under color of state law, subjected the plaintiff to the foregoing acts and omissions, thereby depriving plaintiff of his rights, privileges and immunities secured by the Fourth, and Fourteenth Amendments to the United States Constitution, including, without limitation, deprivation of the following constitutional rights: (a) freedom from unreasonable seizure of his person, including the use of excessive force; (b) freedom from arrest without probable cause; (c) freedom from false imprisonment; (d) freedom from the lodging of false charges against him by police officers; and (e) freedom from having police officers fabricate evidence against him.
33. Defendants' deprivation of plaintiff's constitutional rights resulted in the injuries and damages set forth above.

SECOND CLAIM
MONELL CLAIM AGAINST DEFENDANT CITY – 42 U.S.C. § 1983
(Against the City of New York)

34. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.
35. P.O. CORREA'S and P.O. JOHN DOE'S acts and omissions described above were carried out pursuant to the CITY's overlapping customs and practices which were in existence on December 3, 2013 and were engaged in with the full knowledge, consent, and cooperation and under the supervisory authority of the CITY and its agency, the NYPD.
36. The acts complained of were carried out by P.O. CORREA and PO JOHN DOE in their capacities as police officials pursuant to customs, policies, usages, practices, procedures and rules of the CITY and the NYPD, all under the supervision of ranking officers of the NYPD.

37. The aforementioned custom and practice of the CITY and the NYPD include, but are not limited to arresting persons known to be innocent in order to meet “productivity goals” (i.e., arrest quotas), particularly where such persons are engaged in activity protected by the First Amendment and/or the consent decree Black v. Codd;

38. The existence of the aforesaid unconstitutional customs and policies, **specifically with regard to “productivity goals,”** may be further inferred from the following:

- a. Deputy Commissioner Paul J. Browne has repeatedly admitted that NYPD commanders are permitted to set “productivity goals.”¹
- b. An NYPD transit lieutenant was captured on tape telling officers to make more arrests to meet a captain's order and do more work if they want overtime assignments. “All they care about is ... summonses and arrests and 250s,” Lt. Janice Williams said, using police jargon for the NYPD Stop, Question and Frisk reports. She added, “The bottom line is everybody’s individual activity is being looked at.” Later in the recording - made during a roll call in 2010 at Transit District 34 in Coney Island - she said only officers with “good productivity” will get the opportunity to work overtime. She also said Capt. James Sheerin wanted every officer to make at least one arrest per month - up from the previous order of one every three months - because crime had spiked and arrest totals were lower than other transit districts. “He wants everyone to get in the mindset that there’s no more collar a quarter,” Williams said.²
- c. NYPD Officer Adil Polanco has asserted that his command, the 41st Precinct, regularly requires officer to make at least “one arrest and twenty summonses” per month. P.O. Polanco’s allegations were confirmed by an audiotape obtained by the media. The contents of the tape reveal that these quotas are enforced through coercion and threats of job loss, to wit, a patrol supervisor at the 41st Precinct is overheard saying: “If you think one and 20 is breaking your balls, guess what you’ll be doing. You’re gong (sic) to be doing a lot more, a lot more than what they’re saying.” The tape also reveals that another patrol supervisor chimed in and told the officers: “Next week, 25 and one, 35 and one, and until you decide to quit this job and go to work at a Pizza Hut, this is what you’re going to be doing till (sic) then.”³

¹ Jim Hoffer, *NYPD Officer claims pressure to make arrests*, WABC-TV Eyewitness News, March 2, 2010, available at <http://abclocal.go.com/wabc/story?section=news/investigators&id=7305356> (“Police Officers like others who receive compensation are provided productivity goals and they are expected to work”).

² Rocco Parascandola, *NYPD Lt. Janice Williams captured on tape pushing for more busts, but brass says there’s no quotas*, N.Y. Daily News, March 3, 2011, available at http://www.nydailynews.com/ny_local/2011/03/03/2011-03-03_nypd_lt_janice_williams_captured_on_tape_pushing_for_more_busts.html.

³ *Id.*

- d. The New York Daily News obtained and published two (2) internal memos which were posted inside the roll-call room at the NYPD's 77th Precinct. The memos specifically instructed officers about "number of tickets to give drivers for cell phone, seat belt, double-parking, bus stop, tinted windows and truck route violations" they were expected to issue. The memos remained posted for several weeks inside the roll-call room until the media began inquiring.⁴
- e. Responding to a query from a civilian who was cited on consecutive days in November of 2009 for allegedly occupying more than one seat on the New York City subway, the officer responded: "Recently we've been told to write tickets instead of give warnings for this type of thing." The officer explained that they needed to meet quotas.⁵
- f. In December of 2010 and in response to the pressure from their supervisors to write baseless summonses pursuant to the policy and practice of "quotas," police officers at the 79th Precinct considered organizing a so-called "daylong summons boycott." As one (1) officer at the precinct explained, "Nobody feels this is right, asking us to write summonses just to meet a quota."⁶
- g. In response to the planned summons-boycott at the 79th Precinct, on December 13, 2010, Deputy Chief Michael Marino marched into the precinct at roll call with a deputy inspector and read officers the riot act. "Just try it," a police source quoted Marino as saying. "I'll come down here and make sure you write them." Marino also vowed to transfer people, like he did when he was the commanding officer of the 75th Precinct in East New York.⁷
- h. Capt. Alex Perez, the second in command at the NYPD's 81st Precinct, testified in a civil matter before a Brooklyn Supreme Court jury that officers are likely to get poor performance ratings if they have few arrests, conceding that that arrest numbers are a factor in evaluating an officer's performance.⁸ Ultimately, the jury in that case ruled

⁴ James Fanelli, *Cops at Brooklyn's crime-ridden 77th Precinct told to meet quotas for moving violations*, memos say, N.Y. Daily News, Nov. 8, 2010, available at http://www.nydailynews.com/ny_local/2010/11/08/2010-11-08_cops_told_to_meet_quotas.html.

⁵ Tom Namako and Kirsten Fleming, *Nighttime Riders in Big Sit Fit*, The New York Post, December 26, 2009, available at http://www.nypost.com/p/news/local/space_hogs_lapped_on_empty_subways_m7iRAD9b4E9aYPuGvy5OO.

⁶ Rocco Parascandola, *Irate cops at 79th Precinct in Bedford-Stuyvesant threaten boycott over quotas*, N.Y. Daily News, Dec. 12, 2010, available at http://www.nydailynews.com/news/ny_crime/2010/12/12/2010-12-12_bklyn_cops_threaten_tixwriting_boycott.html#ixzz180Q0JW7t.

⁷ Rocco Parascandola, *Deputy Chief Michael Marino threatens cops at the 79th Precinct who want to go on summons strike*, N.Y. Daily News, Dec. 15, 2010, available at http://www.nydailynews.com/ny_local/2010/12/15/2010-12-15_summons_strike_i_dare_ya_deputy.html.

⁸ William J. Gorta, *Brooklyn Mom's Suit Targets NYPD Arrest Quotas*, N.Y. Post, Feb. 15, 2011, at 6, available on Westlaw at 2011 WLNR 2986205; see also Oren Yaniv, *Capt. Links Arrests, Evaluation of Cops*, N.Y. Daily News, Feb. 15, 2011, at 20, also available on Westlaw at 2011 WLNR 2986205.

that the police had a policy "regarding the number of arrests officers were to make that violated plaintiff's constitutional rights and contributed to her arrest."⁹

- i. The New York City Office of Collective Bargaining concluded that officers in Brooklyn's 75th Precinct were required to issue four (4) parking tickets, three (3) moving violation citations, three (3) "quality-of-life" summonses, make one (1) arrest and two (2) stop-and-frisks each month. Arbitrator Bonnie Siber Weinstock ruled that the NYPD maintained an illegal "summons quota for traffic violations in the precinct and by penalizing officers for failing to meet the stated number of traffic citations." She ordered the city to cease and desist from the practice.¹⁰
- j. Kieran Creighton, commander of the NYPD Housing Police Service Area 8 in the northern Bronx, was investigated for ordering officers to make a certain number of arrests each month. According to The New York Daily News:

The incident allegedly occurred in the spring when Creighton ordered at least eight members of an undercover anti-crime team to a meeting in Pelham Bay Park to berate them about an alleged lack of arrests, sources said.

"You can't make the nine collars a month, then we'll all have to go our separate ways," Creighton told the officers, according to an internal complaint obtained by The News.

Anything less than nine arrests would be a "personal slap in the face," Creighton allegedly said.

Creighton then told the cops to "finagle" the times of arrests so any overtime was paid for by a federally funded anti-drug program, the complaint alleges.

Unbeknownst to Creighton, one officer had his NYPD radio switched on - so the captain's 10 to 12 minute speech was broadcast to Bronx precincts in Morrisania and Schuylerville and taped by a 911 dispatcher.¹¹

⁹ Oren Yaniv, *Court rules that cops do use quotas, woman injured in 2006 arrest settles for \$75,000*, N.Y. Daily News, Feb. 19, 2011, available at http://www.nydailynews.com/news/ny_crime/2011/02/19/2011-02-19_court_rules_that_cops_do_use_quotas_woman_injured_in_2006_arrest_settles_for_750.html.

¹⁰ *New York City Ticket Quota Confirmed, Denied*, The Newspaper.Com, January 21, 2006, available at <http://www.thenewspaper.com/news/09/914.asp>; see also, Kirsten Cole, *NYPD's Bogus Little Secret: Parking Ticket Quotas -- Agents Often Caught Citing You For Violations You Didn't Commit*, WCBSTV.com, August 14, 2007, available at <http://wcbstv.com/topstories/parking.ticket.blitz.2.246533.html> (referring to the arbitrator's report).

¹¹ Allison Gendar, *NYPD captain allegedly caught in arrest quota fixing*, The New York Daily News, November 14, 2007, available at http://www.nydailynews.com/news/ny_crime/2007/11/14/2007-11-14_nypd_captain_allegedly_caught_in_arrest_-1.html#ixzz0bfPBhRTz.

39. The existence of the above-described unlawful de facto policies and/or well-settled and widespread customs and practices is known to, encouraged and/or condoned by supervisory and policy-making officer and officials of the NYPD and the CITY, including, without limitation, Commissioner William Bratton.
40. All of the foregoing acts by the individual defendants deprived plaintiff Mr. HURLEY of federally protected rights, including, but limited to, the constitutional rights enumerated in paragraphs "30" above.
41. The CITY knew or should have known that the acts alleged herein would deprive the plaintiff of his rights, in violation of the Fourth and Fourteenth Amendments to the United States Constitution.
42. The CITY is directly liable and responsible for the acts of the individual defendants because it repeatedly and knowingly failed to properly supervise, train, instruct, and discipline them and because it repeatedly and knowingly failed to enforce the rules and regulation of the CITY and NYPD, and to require compliance with the Constitution and laws of the United States.
43. Despite knowledge of such unlawful de facto policies, practices and/or customs, these supervisory and policy-making officers and officials of the NYPD and the CITY, including Commissioner William Bratton, have not taken steps to terminate these policies, practices and/or customs, do not discipline individuals who engage in such policies, practices and/or customs, or otherwise properly train police officers with regard to the constitutional and statutory limits on the exercise of their authority, and instead sanction and ratify these policies, practices and/or customs through their active encouragement of, deliberate

indifference to and/or reckless disregard of the effect of said policies, practices and/or customs upon the constitutional rights of persons in the City of New York.

44. The aforementioned CITY policies, practices and/or customs of failing to supervise, train, instruct and discipline police officers and encouraging their misconduct are evidenced by the police misconduct detailed herein.

45. Mr. HURLEY's injuries were a direct and proximate result of the CITY and the NYPD's wrongful de facto policies and/or well-settled and widespread customs and practices and of the knowing and repeated failure of the defendant CITY and the NYPD to properly supervise, train and discipline their police officers.

JURY DEMAND

46. Plaintiff demands a trial by jury in this action on each and every one of his damage claims.

WHEREFORE, plaintiff demands judgment against the defendants individually and jointly and prays for relief as follows:

- a. That he be compensated for violation of his constitutional rights, pain, suffering, mental anguish, and humiliation; and
- b. That he be awarded punitive damages against the individual defendants; and
- c. That he be compensated for attorneys' fees and the costs and disbursements of this action; and
- d. For such other further and different relief as to the Court may seem just and proper.

Dated: New York, New York
 January 6, 2013

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read 'Mark Taylor', is written over a horizontal line.

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